



South Carolina

Board of Podiatry Examiners

June 2003

Volume 1

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South Carolina Department of
Labor, Licensing and Regulation

Advertising information

The First Amendment to the U.S. Constitution guarantees the right to free speech. Statements made in advertisements of any kind by licensed professionals including podiatrists, are within the First Amendment's protection as "commercial speech." The limitations on government regulation of commercial speech have been discussed by the U.S. Supreme Court in Ibanez v Florida Department of Business and Professional Regulation, Board of Accountancy. 512 U.S. 136, 129 L.Ed. 2d 118, 114 S.Ct. 2084 (1994).

In Ibanez, the Florida Board of Accountancy had learned of a licensee's use of the designations Certified Public Accountant (CPA) and Certified Financial Planner (CFP), as well as her being a licensed attorney, when a copy of Ibanez's yellow pages advertisement was mailed anonymously to the Board's office. The Board commenced an investigation and subsequently issued a complaint against her. After a hearing, she was disciplined with a public reprimand from the Board for engaging in "false, deceptive, and misleading" advertising and ultimately appealed to the U.S. Supreme Court, which reversed the Florida Court decisions upholding the Board's Final Order.

The Court stressed that only false, deceptive or misleading commercial speech may be banned. If a statement is not false, deceptive or misleading, then the state may restrict it only upon a showing that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest. This is the rule because of the Court's firm belief that the disclosure of truthful, relevant information is more likely to make a positive contribution to decision making by the public than would concealment of such information. Therefore, the state's burden is not slight; the "free flow of commercial information is valuable enough to justify imposing on would-be regulators the costs of distinguishing the truthful from the false, the helpful from the misleading, and the harmless from the harmful." Id. at 2089. The state must demonstrate that the harms it recites are real and the specific restriction will in fact alleviate them to a material degree. Mere speculation or conjecture will not suffice.

The Court accordingly held that the licensee's use of her attorney title and CPA designation on her commercial communication was not false. It further recognized that it is difficult to see how consumers can be misled by a truthful representation to that effect.

Regarding her use of a special designation (CFP) that had not been approved by the Board in violation of the Board's rule, the Court noted that the state may not completely ban statements that are not actually or inherently misleading, such as certification as a specialist by a bona fide organization. To do so, the record must show that the state specifically addressed key aspects of the designation at issue, such as the nature of the authorizing organization and the state of knowledge of the public to whom the communications are directed.

The parameters of permissible government regulation of commercial speech are nebulous at best. Only the United State Supreme Court can authoritatively decide whether a regulation in a particular factual setting is constitutional. However, it is clear, for instance, that an advertisement using the term "doctor" when the term could refer to degrees other than a Doctor of Podiatric Medicine also could result in having to defend against charges that the advertisement misled a potential or actual patient. Such expenses are often significant and not covered by traditional malpractice insurance. For this reason, the Board strongly recommends that licensees be both detailed and accurate in their advertising of professional qualifications.

Board Facts

As of June 2003, the Board has 144 licensed Podiatrist.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION BOARD OF PODIATRY EXAMINERS

Final Orders and Other Actions

January 1, 1996 to present

Respondent/Location	Action/Date	Findings of Fact/(Sanction)
Stellwagen, J. David, D.P.M. Seneca, SC	Final Order November 19, 1996	Practiced beyond the scope of practice. <i>(License suspended, stayed with terms and conditions on license.)</i>
Stellwagen, J. David, D.P.M. Seneca, SC	Order of Reinstatement June 30, 1999	Substantially complied with terms of the Final Order of November 19, 1996. <i>(Petition for reinstatement granted.)</i>
Name Unpublished	Private Agreement June 30, 1999	<i>(Private Agreement with terms and conditions on license.)</i>
Name Unpublished	Final Order December 24, 1999	Performed a debridement procedure in a manner and under conditions that breached the minimally acceptable standard of care. <i>(Private Reprimand, \$5,000 fine and terms and conditions on license.)</i>
Name Unpublished	Final Order February 12, 2001	Provided podiatric care against the expressed wishes of the patient. <i>(Private Reprimand and \$100 fine.)</i>
Name Unpublished	Private Agreement June 11, 2001	<i>(Private Agreement with terms and conditions on license.)</i>
Stellwagen, J. David, D.P.M. Anderson, SC	Order of Temporary Suspension April 25, 2002	<i>Failed to comply with the Board's Final Order dated December 24, 1999.</i> <i>(License to practice podiatry in this state is temporarily suspended.)</i>
Stellwagen, J. David, D.P.M. Anderson, SC	Consent Order of Reinstatement June 10, 2002	Demonstrated compliance with Order of Temporary Suspension. <i>(License temporarily reinstated pending Final Order of the Board)</i>
Name Unpublished	Final Order August 30, 2002	Signed a prescription in blank for Schedule IV controlled substance and left at his office for the use of any patients while he was out of town. <i>(Private Reprimand and \$500 fine.)</i>
Stellwagen, J. David, D.P.M. Anderson, SC	Final Order November 21, 2002	Guilty of immoral, dishonorable, unethical and unprofessional conduct that is likely to deceive, defraud or harm the public; provided prescriptions for controlled substances without documentation of a course of treatment or medical justification; attempted to persuade a pharmacist to alter a prescription or accept a fraudulent prescription; conducted fraudulent billing practices; addicted to alcohol or drugs to such a degree as to render him unfit to practice podiatry. <i>(License to practice podiatry in South Carolina is revoked.)</i>

This report is only a brief summary of these matters. It does not purport to be a complete account of the Board's findings. The Board's complete factual and legal conclusions are contained in its Orders. These are available pursuant to the Freedom of Information Act by writing to the Board at P. O. Box 11289, Columbia, SC 29211-1289. A research and copying fee will be charged for each request.

From the Chairman *Marshall N. Kalinsky, DPM*

Welcome to the inaugural issue of the South Carolina Board of Podiatric Examiners. It is the goal of the board to inform all licensed South Carolina Podiatrists of the issues pertaining to themselves and the impact upon their practices. The South Carolina Board of Podiatry Examiners is charged by state law with the administering of tests and licensing all passing applicants. The Board also regulates the occupation of podiatry by receiving, reviewing and if necessary, acting upon the claims of consumers in various agencies. It is this responsibility that the staff, members of the Board, and myself take seriously. We appreciate your support.

Marshall N. Kalinsky, D.P.M.
Chairman

On-Line Renewal takes place on October 1, 2003

Starting October 1, 2003 you will be able to renew your South Carolina Podiatry license on-line with a MasterCard or Visa credit cards. (Debit cards cannot be accepted.) A small convenience fee of \$1.25 is necessary for this service. Although we are sending renewal applications in the mail, we would like to encourage all licensees to renew on-line. One of the benefits of on-line renewal is that you receive immediate confirmation that the renewal has been successfully completed. Generally, the license is issued within 48-72 hours after the license has been submitted on-line.

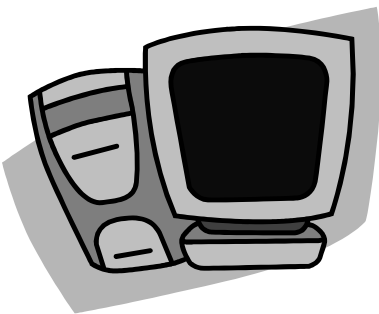
Your renewal material will be provided with a password and user identification number that will allow you to access this feature on-line.

Random Audit

In order to monitor compliance with renewal requirements, a random audit will be conducted each renewal period. Podiatrists to be audited will receive notification of audit from the Board and must submit copies of the required CME documentation upon request to verify compliance.

We Need Your Help!

The Podiatry Board receives complaints against licensees alleging professional misconduct. Each complaint is investigated. As part of the investigation, patient hospital and pharmacy records often need to be reviewed to determine if there is any validity to the complaint. **We need volunteer podiatrists to review those records.** The Board pays \$100 per hour for reviewers. If you are willing to assist the Board and your profession by reviewing records, call Assistant Administrator Henry Morgan at (803) 896-4685 or write to Mr. Morgan at P. O. Box 11289, Columbia, SC 29211-1289.



Visit us on the Web!

www.llr.state.sc.us/pol/podiatry

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HAVE YOU MOVED?

It is the responsibility of the licensee to keep the Board office informed of current address and telephone information. When these changes occur, please notify this office immediately in writing by mail or fax at (803) 896-4515. If you have moved since your last renewal, fill in the information below and return it to the Board.

SC License Number_____

Name of Licensee_____

Mailing Address_____

City, State, Zip_____

Telephone Number_____

Signature_____

Date_____

